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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,844	09/19/2005	Ngoc Chau Bui	5019-1005	7862

  

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EXAMINER	
NWUGO, OJIAKO K	

  

ART UNIT	PAPER NUMBER
4131	

  

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Office Action Summary</b></p>	<b>Application No.</b> 10/549,844	<b>Applicant(s)</b> BUI ET AL.	
	<b>Examiner</b> Ojiako Nwugo	<b>Art Unit</b> 4131	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) The invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claim 1-4** is rejected under 35 U.S.C. 102(b) as being anticipated by Johan David Kruger European Patent Application EP 1083519. (Hereafter referred to Kruger)

Regarding **Claim 1** Kruger discloses in figure 1 and paragraphs 34-36 a container 10 with transponder 22. The transponder having a structure or shape that allows it to be attached to the container. This reads on "radio identification element (RFID, Radio Frequency Identification Device) for labeling a container characterized by a shape that allows it to be attached within the container".

Regarding **Claim 2**, as treated in **claim 1**, the transponder 22 is already attached to the container 10. Thus its structure allows it to be attached to the container. This reads on "its shape allowing it to be attached in the opening of said container"

Regarding **Claim 3**, Kruger discloses in figure 1 that the transponder 22 is attached to the neck of the bottle. This reads on "its shape allowing it to be attached in the neck of a bottle".

Regarding **Claim 4**, Kruger discloses in figure 1 and paragraph 36 a transponder 22 that includes a chip 24 and antenna 26. The antenna 22 is a ring around the neck of the bottle thus the transponder or label has an opening that allows for the passage of contents. This reads on "having an opening that allows for passage of the contents of said container".

**Claim 8** is rejected under 35 U.S.C. 102(b) as being anticipated by Robert Bialloid et al US Patent Publication 2002/0185544 A1. (Hereafter referred to as Bialloid)

Regarding **Claim 8**, Bialloid discloses in figure 1 and paragraphs 24 an RFID transponder 18 embedded in the cork of wine bottle 12. The cork in turn is located within the enclosure of the bottle. This reads on "an opening, the section of said opening being smaller than the maximum section of said container and comprising an electronic label containing a radio identification element (RFID, Radio Frequency Identification Device), wherein said electronic label is placed within said container".

Regarding **Claim 9**, Bialloid discloses in Figure 1 and RFID transponder 18 located within the opening of the wine bottle 12. This reads on "electronic label being placed in said opening".

Regarding **Claim 10**, Bailloid discloses in figure 1 and paragraph 21 that the data carrier 14, which includes the RFID transponder 18, is located under the

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capsule 17. This reads on "closed by a top electronic label being placed under or in said top".

**Claim 18** is rejected under 35 U.S.C. 102(e) as being anticipated by Larry Smeyak et al US 2003/0235027 A1. (Hereafter referred to as Smeyak)

Regarding **Claim 18**, Smeyak discloses in fig. 1 and paragraph 20 a package 10 in which RFID tag 16 integrated into the into closer 12. This reads on "Dispenser top for closing the opening of a container, the section of said opening being smaller than the maximum section of said container, wherein it comprises an electronic label containing a radio identification element (RFID, Radio Frequency Identification Device)".

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Regarding **Claim 20**, Smeyak discloses in fig. 1 and paragraph 20 a package 10 in which RFID tag 16 integrated into the into closer 12. This reads on "dispenser top according to said electronic label being integrally connected to the body of the dispenser top".

Regarding **Claim 21**, Smeyak discloses in fig. 1 and paragraph 20 a package 10 in which RFID tag 16 integrated into the into closer 12. This reads on "Dispenser top according to claim 18 said electronic label being molded in the body of said dispenser top".

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 5-7** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kruger.

Regarding **Claim 5**, Sockets is defined as a hollow part or piece for receiving and holding some part or thing. The electronics label as disclosed by the applicant may not fit this definition since it does not perform any holding function. However it is designed such that it will let liquid pass through it. Kruger discloses in figure 1 and paragraph 36 discloses a transponder 22 that includes a

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chip 24 and antenna 26. The antenna 26 shaped in the form a cylinder around the neck of the bottle to allow for liquid flow.

It would have been obvious for one of ordinary skill in the art at the time of invention to incorporate the transponder structure or shape of Kruger that allowed for the dispensing of liquid inside the container.

Regarding **Claim 6**, In Kruger only the antenna 26 forms part of the cylindrical coil around the neck of the container 10, with chip 24 being a localized chip from which the antenna extends. MPEP 2144.04 section IV subsection B states that the shape of choice.

It would have been obvious for one of ordinary skill at the time of the invention to choose any shape that function.

Regarding **Claim 7**, In Kruger only the antenna 26 forms part of the cylindrical coil around the neck of the container 10, with chip 24 being a localized chip from which the antenna extends. MPEP 2144.04 section IV subsection B states that the shape of choice.

It would have been obvious for one of ordinary skill at the time of the invention to choose any shape that function.

**Claim 11** and **12** are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailloid in view of U.S Patent 6024142. (Hereafter referred to Bates)

Regarding **claim 11**, Bailloid discloses all the limitation of claim 11 as applied to **claim 10** except electronic label placed around stem. Bates discloses in figure 1 and col. 5 lines 32 - 37an annular RFID transponder 38 around the

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fuel nozzle. This reads on "electronic label being placed around the stem of said dispenser top".

It would have been obvious for one of ordinary skill to place the RFID transponder of Bates into the neck of wine bottle of Bailloid so not impede transponders effective transmission range as taught by Kruger.

Regarding **claim 12**, Examiner takes official notice the RFID transponder of Bates could have been incorporated into the structure of the nozzle by any number of means including glue and soldering.

It would have been obvious by one of ordinary skill at the time of the invention to incorporate the transponder by means of glue or soldering.

**Claim 13** and **14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailloid in view of Theodorous Smoulders et al European Patent specification EP 0875292 B1. (Hereafter referred to as Smoulders)

Regarding **claim 13**, Bailloid discloses all the limitations of **claim 13** as applied to claim 10 except RFID transponder in watertight capsule. Smoulders discloses in figure 2 and paragraph 12 an RFID transponder 3 in a closed cavity 11. T This reads on "electronic label and the body of said top being combined in a watertight capsule".

It would have been obvious for one of ordinary skill at the time of invention to incorporate watertight cavity of Smoulders into the Bailloid in order prevent fuel damage of RFID.

Regarding **Claim 14** Smoulders that Transponder 3 is a separable part of the sample vial which reads on "electronic label being molded in the body of said



top”.

**Claim 15** is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailloid in view of Faust Hagin US Patent 4647084. (Hereafter referred to Hagin)

Regarding **Claim 15** Bailloid discloses a bottle with a cork. It does disclose the use of a washer. Faust discloses a washer 11 whose internal diameters are slightly larger than the hole over which they are placed. The “clearance” reads on ‘Fin’.

It would have been obvious for one of ordinary skill at time of the invention to incorporate fin of Faust into the opening of Bailloid for a snug fit as taught by Faust.

Regarding **claim 16**, Examiner takes official notice that use of atomizer on dispensers such as perfume bottles was widely in use at the time of the invention.

It would have been obvious for one ordinary skill at the time of the invention to incorporate an atomizer into the dispenser for the purpose of converting liquid to spray.

Regarding **claim 17**, Examiner takes official notice that the use of valve on dispenser like the fuel nozzle in bates was well known in the art at time of the invention.

It would have been obvious for one of ordinary skill in the art at the time of the invention to incorporate valve in to dispenser to control liquid flow.

**Claim 19, 22 and 23** are\ rejected under 35 U.S.C. 103(a) as being unpatentable over Smeyak.

Regarding **Claim 19**, Smeyak discloses all the limitation of **claim 19** as applied to **claim 18** except the RFID tag integrated into the stem of the cap. It would have been obvious for one of ordinary skill in the art at the time of the invention to incorporate into the stem as a matter of design choice.

Regarding **claim 22**, Examiner takes official notice that use of atomizer on dispensers such as perfume bottles was widely in use at the time of the invention.

It would have been obvious for one ordinary skill at the time of the invention to incorporate an atomizer into the dispenser for the purpose of converting liquid to spray.

Regarding **claim 23**, Examiner takes official notice that the use of valve on dispenser like the fuel nozzle in Bates was well known in the art at time of the invention.

It would have been obvious for one of ordinary skill in the art at the time of the invention to incorporate valve in to dispenser to control liquid flow.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ojiako Nwugo whose telephone number is (571) 272 9755. The examiner can normally be reached on M - F 7.30am - 5.00pm EST, Alternate Fridays Off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian T. Pendleton can be reached on (571) 272 7527. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

OKN

  
BRIAN TYRONE PENDLETON  
SUPERVISORY PATENT EXAMINER